

DISTRICT OF COLUMBIA STATEHOOD CONSTITUTIONAL CONVENTION

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Saturday, May 15, 1982

Washington, D.C.

The plenary session was convened at 11:00 a.m. in Convention Hall, 9th Floor, 10th and E Streets, Northwest, Washington, D.C., Theresa Jones, presiding as Chairperson.

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P R O C E E D I N G S

MR. COOPER: Fellow delegates, will the delegates please come to order such that we can establish a quorum?

[The roll was called as follows:

Delegate Baldwin, No response; Delegate Barnes, Present; Delegate Blount, No response; Delegate Bruning, Present; Delegate Cassell, No response; Delegate Clark, No response; Delegate Coates, No response; Delegate Cooper, Present; Delegate Corn, No response; Delegate Croft, Present; Delegate Eichorn, No response; Delegate Feely, No response; Delegate Freeman, No response; Delegate Garner, No response; Delegate Graham, Present; Delegate Harris, No response; Delegate Holmes, No response; Delegate Jackson, Present; Delegate Johnson, No response; Delegate Jones, Present; Delegate Jordan, Present; Delegate Kameny, No response; Delegate Lockridge, Present; Delegate Long, Present; Delegate Love, No response; Delegate Maguire, No response; Delegate Marcus, No response; Delegate Charles Mason --

MRS. MASON: Mr. Secretary, I would like the record to show that I have my hand on Charles Mason's bag. He was here at ten minutes after ten. He is now at my office on an errand for the Convention office, and he will be back.

MR. COOPER: Thank you.

Delegate Hilda Mason, Present; Delegate Brian Moore, Present; Delegate Jerry Moore, No response; Delegate Talmadge Moore, No response; Delegate Nahikian, Present; Delegate Nixon, No response; Delegate Oulahan, No response; Delegate Paramore, No response; Delegate Robinson, No response; Delegate Rothschild, No response; Delegate Schrag, Present; Delegate Shelton, No response; Delegate Simmons, No response; Delegate Street, No response; Delegate Terrell, No response; Delegate Thomas, No response; Delegate Warren, No response.

There are 14 delegates present and answering the roll. We do not have a quorum.

MR. SCHRAG: Would you please announce the time, Mr. Secretary?

MR. COOPER: Yes, that is at 11:07 a.m. Eastern Daylight Time.

At this point, the only other business that can be in order is nominations for election of a Chair Pro Tem to preside until such time as the Chair does arrive.

MS. JONES: You can't do that. You must Chair.

MR. COOPER: Madame Treasurer, the Secretary does not Chair the meeting. The only order of business he can do is hold the election for a Chair Pro Tem to president until one

of the Chairs arrive.

MS. JONES: We do it by succession.

MR. CROFT: I move the nomination of William Cooper.

MS. GRAHAM: Well, excuse me. We cannot move anything without a quorum, can we?

MR. COOPER: We can elect a Chair Pro Tem..

MS. GRAHAM: We can discuss, but we can't elect anybody.

MR. COOPER: Well, what is the consensus of the body?

MR. CROFT: Mr. Chairman, I move the nomination of William Cooper as the Chairman Pro Tem..

MR. COOPER: That nomination would be out of order.

MR. LONG: Mr. Cooper, I move that we adjourn, as provided by the rules, from time to time, and attempt to secure a quorum.

MR. SCHRAG: Recess.

MR. LONG: The rules say "adjourn".

MR. JACKSON: We can't adjourn unless we have a meeting.

MR. COOPER: Well, we were called to order, but we did not have a quorum, and we can move to adjourn from time to

time without a quorum. That is one of the motions we can make without a quorum.

MRS. MASON: Mr. Chairman, technically, I don't think we are in session. We only called the roll to see if we had a quorum to go into session. I think we can just drop it right here and wait and see if anybody is coming.

MR. LONG: Why don't we divide up the list and start calling people?

MR. B. MOORE: But calling people -- there is something innately wrong about that, to call people.

MR. SCHRAG: It's in the rules that we are supposed to go find absent delegates. It's in our rules.

(Discussion off the record.)

MS. JONES: We will propose with the question and answer period, and we will follow the same format we followed yesterday morning starting at 8:30.

Mr. Croft is still Chairing his Committee.

MR. B. MOORE: Is he still in the house?

MR. COOPER: He probably went to make a phone call or get something to eat.

MS. JONES: Are any Committee members here?

MR. LONG: Yes.

MS. JONES: Will those two Committee members take their places, and we will then recognize delegates and entertain any questions.

MR. COOPER: We can't answer questions because we are a minority of the Committee.

MS. JONES: I am told that those two Committee members cannot answer questions.

Delegate Croft is now here. Delegate Croft will entertain any questions that you may have for the Committee, and we will continue with the question and answer period until a quorum has arrived.

Delegate Croft?

MR. CROFT: Yes.

MS. NAHIKIAN: Delegate Croft, in the work of the Committee -- and this is a dilemma that I have generally with economic development -- there are many things in the article that I personally support, a large number of things. It is more a political strategy/philosophical question as to

whether or not it makes sense to put those articles in the Constitution, and I just wondered if you all had any serious debate about that, or if there is another strategy that the Committee had in mind here?

MR. CROFT: Yes, we did. We went through a situation of dealing with five different possible options to each of the areas that we have under our consideration, and one of the options always was to say nothing about it in the Constitution. To say nothing about it was always one of the options. In other words, for each of the things, the option was to say nothing. We had five different things, and the first option always to say nothing.

MS. NAHIKIAN: Well, the point I am making is that it is certainly unusual in a constitution to give an individual a right of personal recourse over environmental issues.

MR. CROFT: No, that is not.

MS. NAHIKIAN: That is in other constitutions?

MR. CROFT: Yes. We did a fairly detailed report the last night during that debate, and we did act on that. Last night, Delegate Marcus, during that debate, read a statement that had the same language as that we proposed. There are approximately 12 or 13 states that have that language.

One of the points that has been made, both on the

floor and in the lobbying is that what we are doing is an exception, and it is not indeed an exception. Every article that we have can be found in some other constitution -- that does not mean the language verbatim, necessarily.

MS. NAHIKIAN: Is that true of the right to strike?

MR. CROFT: The right to strike is in no constitution. We do not make a claim to that, but we do make an argument for it and we will make the argument for it when it comes to the floor.

MS. NAHIKIAN: What about the language around labor that says that no law could be passed to do away with labor unions. Is that anyplace in any other constitutions?

MR. CROFT: There is contrary language in the constitution. There is in other constitutions anti -- and I like to use the words "anti-working class" -- anti-working people.

The next point I want to make is that there are indeed several constitutions that have the same identical language as the first line in our section on labor.

MR. T. MOORE: Mr. Croft, could you give me a more definitive definition of Section 2, Transportation, Utilities and Energy. It comes under Utilities on page 6 and the top of page 7, line item 1 and 2.

MR. CROFT: Well, line items 1 and 2 got amended out last night, unfortunately. They are not a part of the main motion.

MR. T. MOORE: What about line item 1 to the period?

MR. CROFT: That was amended out last night.

MR. T. MOORE: I have another question on something that was lined out yesterday. Do you think that the constitution should have all these specific details, or that it should be more or less a general document?

MR. CROFT: If you could refer to what you mean by "specific" in the articles.

MR. T. MOORE: I mean details, you know, "A", "B", and these additional references.

MR. CROFT: In my own efforts, having spent some time reading the various constitutions, I have found that they vary, article by article, about whether they are brief or whether they are fairly detailed. And again, I would argue that we are not the exception about the way we print this; that there are indeed many state constitutions which sections similar to ours are indeed much longer, much more detailed, things spelled out in much more specific terms.

I think that when we do an article, we don't say X, Y, Z, should be done this way, and every "i" should get

dotted; what we do is try to spell out the general principles. And while we have not said there should be this law, things should operate this way, just as an example, we say that we should establish agencies to regulate public utilities. We do not say how many people on it, how they are chosen, et cetera. We say there will be an agency and we outline the function. We say that agency function shall be to provide for the conservation of energy resources within the state, as provided for by law. That is not that different from the way this matter is handled in other state constitutions.

MR. T. MOORE: My other question is, yesterday evening, we had quite a debate and discussion on some of the issues when we sought the aid of legal counsel and we had two legal minds battling it out. I was just wondering, Mr. Croft, as to whether people not quite as learned as you are going to be able to interpret this document. My opinion is that it should be flexible, understandable, and concise, or people won't understand this document when they read it. Now, the legal minds got together yesterday, and I think they had quite a controversial issue, even the more talented legal minds in this body.

MR. CROFT: Well, it is my opinion that lawyers have a kind of unconscious enjoyment in terms of making things hard to understand. I certainly believe that folks see their interests extremely clearly. Folks clearly understand their interests. I think that we have a way of indeed trying to remind them what their interest is, and I think that legal minds have a way of doing that.

For three years of my life, during my high school years, I worked as a steelworker; I worked in a steel mill, in a coke oven, in which 90 percent of the people in there were black people and worked in coke ovens. I clearly understood after being there for three days that one of the foremen wasn't my friend. I clearly understood the foreman was not my friend. I clearly understood that I had to have somebody help me deal with the foreman. So I joined the union.

I think that there are other types of examples of that. For example, I think that last night, on the debate around the section that was struck, people kept saying that this would throw the state open or we have lost it, on the environment. Well, reality -- and people said -- let me cite an example. Hawaii has the same, identical language. It has not been bankrupted with lawsuits. At least 13 other states have the same, identical language and they have not been

bankrupted with lawsuits.

Another point is, people kept saying, "My neighbor will sue me." Well, that has not been the experience in these other states. Now, what is important is that who doesn't get sued are the major corporations. In other words, who doesn't get sued are the major corporations. And indeed, the major corporations can hide behind the fact that they are an artificial person, and people can obscure the right of individuals to bring lawsuits to indeed prevent them individually from being able to bring a lawsuit against a corporation.

For example, who do you really think is going to be sued -- the person who doesn't cut his grass or the absentee corporate landlord who won't fix the lead poisoning in the house where children eat? I mean, that is substantial, because even though an issue is over and done with, and we lost it fair enough, things like that disturb me because I think what we are blind to is whose interest are we trying to protect. Whose interests are we trying to advance?

What I'm trying to say is, I don't care if the grass is not cut. I'm not going to sue you. But I do want the right to be able to enforce an environmental axe on a corporate slumlord who has his walls filled with lead, and kids are eating it. And I guess what we are trying to say is that

-- in other words, I am not going to put a massive formula between constitutional language and legislative language. And one of the arguments made, one of the statements made from one of the books that we have, "The Shape and Form of the Constitution", the author makes the point that brevity is one standard, but it is not the only standard and it is not in all cases the most important standard. If brevity is achievable, we should aim for it, and I think we should try to aim for it. But the author makes the point that brevity is only one standard, and it is not always the most important standard. He does make the point, though, that constitutions should try to do things that aren't transitory, or those things that sometimes probably people believe to be above the normal decisionmaking process.

And I guess I feel that when we start debating, when we get to certain fundamental limits, I think the question becomes a really fundamental question; the question becomes one of value. The question becomes a fundamental question, and that is whether we believe certain things are so fundamental that they must be protected from transitory regards. In other words, what are those certain things?

Yes?

MR. B. MOORE: Howard, on the idea of the state

being obligated to establish and maintain and fund a system of public transportation --

MR. CROFT: We didn't say the state was obligated to maintain and fund and do it. We said the state was obligated to see that one existed.

MR. B. MOORE: Okay, it's basically the same thing.

MR. CROFT: No -- but go ahead.

MR. B. MOORE: Down in Louisiana, I believe, they just closed down their transportation system, their bus system, because of operating deficits over a period of years. How does a community deal with something like that? Where does state obligation end or begin on this? I think that the economic realities dictate something else.

MR. CROFT: I guess I was going to make the point that no rights are ever absolute. It can reach the point in which the state cannot support.

MR. B. MOORE: So you do recognize that, then?

MR. CROFT: Yes. We are not arguing that things are absolute. Rights are not absolute. We are not saying -- the point, though is, this. The point is that you can say that about almost any article in any constitution when it begins to deal with things that have physical impact. You

can always hypothesize that a point will be reached at which time the state will not be informed. But let me reverse that argument, again going back to an article which was indeed defeated last night. And I want to raise a question again about whose interest we think about. For example, we can think about the fact that the state may be at the point where it cannot inform because of economic reasons. We can also hypothesize and say a public utilities corporation may be at a point where, if it doesn't get "x" rate, they can't inform -- but again, what we don't want to acknowledge, which indeed disturbs me, is the point that people can reach a point around these issues on which they have no recourse. Corporations have a recourse; people don't.

And I am not enamoured with the U.S. Constitution; I don't romanticize the U.S. Constitution. I am a historian, and I certainly do not romanticize the U.S. Constitution.

MR. B. MOORE: I have a question on Section 4, the right of the public to own utilities. At lines 13 and 14, you say "empower the state to acquire for itself...cooperative of all users...condemnation of all private property and rights-of-way incident." What is the balancing? When can a state go too far, and what is to keep a state from going too far? Should not there be something put in this paragraph?

MS. JONES: Would the delegates in the hall please quiet down?

MR. CROFT: Brian, I can't hear you.

MR. B. MOORE: I just wanted to know if there was any leverage on the state to keep it from imposing too much restriction and too much power on the people. In other words, you say you give the right of the state to condemn all private properties and rights-of-way, et cetera, supposedly for the good of the people, but --

MR. CROFT: No, no. Again, let's not take it out of context. First of all, we have already restricted the power of eminent domain. And this section here, all these words refer to only the property necessary for public utilities. In other words, we have already, in the Land Use section, restricted the power of eminent domain.

MR. B. MOORE: Okay, good point.

MR. CROFT: And again, I wanted to clear up a statement that was made last night. We have not given the state eminent domain. That is an inherent power of the state when it is sovereign. What we have done is restrict the power of eminent domain. We are not giving the state anything it doesn't have. Indeed, we have taken from the state something. The state apparently has eminent domain rights.

MR. KAMENY: We are writing the constitution. It has nothing we don't give it or allow it to keep.

MR. CROFT: Well, maybe I can answer that. I think that the eminent domain language that we use -- and the point is that we have tried to come up with an extremely restrictive definition of eminent domain. And again, the language of Section 4 is under "Transportation, Utilities and Energy", and refers only to property, rights-of-way, et cetera, et cetera, "Incidental or necessary to the acquisition, ownership, control, development, and operation of..."

We're not saying they can come and take your house, my house, my nextdoor neighbor's house. We are essentially saying that people, through one of two processes, either through their legislators or through initiatives, decide that they want to own public utilities, they have the authority to acquire through the necessary --

MR. B. MOORE: And the use of a cooperative, I guess, is to facilitate a community ownership, right -- nonprofit?

MR. CROFT: Yes, we are saying, in other words, how would things go into effect. They would go into effect either through the legislature itself, the people's agents, or the people themselves' initiatives. And the question of

who would own, I think it would be owned in different ways.

MR. B. MOORE: I see.

I have another question. The whole idea of the relationship between the public and public utilities -- what is the fine line, or is there a fine line, between public utilities and services that are privately owned and distributed but apparently don't have the title of public utilities -- and why -- what is the difference?

MR. CROFT: Well, again, "public utilities" is a generic term. We talk about certain services that are deemed necessary to the general welfare and can usually, in the practical sense, only be provided by one source, or monopoly. And again, because they are a monopoly, and they provide such a service under the power of the states, they have assumed the right to regulate.

And I guess that -- first of all, public utilities are monopolies, which means that the economic term of substitution does not exist. In other words, most people are not going to substitute gas for coal, and they are not going to substitute it for wood. They may substitute it for another service owned by another monopoly, electricity. In other words, you can't substitute. In other words, people can't shop around.

MR. B. MOORE: Yes, it's not competitive.

MR. CROFT: In other words, you can't shop around for the cheapest natural gas if you live in Washington, D.C. You get it from Washington Gas Light Company.

MR. JORDAN: Let me ask one question in that regard. Public services are licensed operators -- I mean, they don't have perpetual rights to operate. Has the Committee taken into consideration -- let me just do it this way -- the Federal Communications Commission says you operate for three years and then you come up for licensing. Cab drivers who are public services are licensed and regulated maybe every year. Has the Committee considered licensing the gas companies, the light companies, the telephone companies? Have they considered that as a process of also ensuring that there would be some accountability to citizens, because as I see it now, you are right, we have been over a barrel because, as you say, we don't have any alternative. But if their license existed for "x" number of years, and they could not demonstrate that they in fact had to perform a public service in addition to not being able to receive a higher rate, and they are just sitting back, enjoying a license.

There is another aspect of this, too. There are a

lot of accommodations made to utilities that are never taken into consideration, like bringing their wires above the ground on public space, on private space. They don't pay me to bring their electric wires across my property to my neighbor's house. The city makes accommodations to allow them to dig up our street and bury their lines, and they never have to return them to the same state they were in before they dug up the street, so therefore, I have potholes. I am just saying saying that this just may be an approach to dealing with part of the problem, and if at the end of the license period, other people come in who want to compete for that license, they do.

MR. CROFT: Okay. We didn't consider it in those terms, but questions like that did come up. We did not consider it in those particular terms, but during the public roundtable and during the public hearings, things similar to that did come up. And again we were confronted with the legal standing of public utilities, and that is that they have put things into the ground, and if we take their license away from them -- in other words, they right now own the grids, they own the stuff. But let me point out, they own that stuff, and if you take it from them, you have got to pay them for it. And again, publicly-owned utilities are the

growing concern for the United States, but one of the problems that people have had is that people have had is that even when they have been able to win the referendum to get the states to indeed take the public utilities, they get hung up in court forever over the question of how much is the property worth. For example, in New York, there is a utility company that has frustrated a referendum for about ten years over the question of how much is their property worth. So again, the problem is if you revoke their license, you could not imagine transferring someone out without being able to buy their property.

MR. JORDAN: No, I understand that. I am saying that that during the consideration of the licensing renewal, you could receive competing applications and that's one thing, and I am saying there is no difference between a TV or radio station that owns property and finds itself without a license and then it is useless for them. Do you understand what I'm saying?

MR. CROFT: Yes.

MR. JORDAN: And also, I would think it would be very useful to find out how much the property is worth. They must in some way say what the property is worth in order to get a rate increase. I mean, they have to tell you what their capital investment is -- I can understand that they

would want to litigate this, but I'm saying I think it would be very simple to determine what their property is worth.

MR. CROFT: If you want to make an amendment, fine. If you want to amend, I second.

MS. JONES: Delegate Marcus is answering for the Committee.

MR. MARCUS: The thing that convinced me, Delegate Jordan, was that we asked ourselves who else would have the facilities to be able to pick up the services of a particular experience, and at this point in time, it seems that that would have to be facilitated through the state one way or the other, and that is why the language is there, to permit the state to acquire that.

I absolutely am in sympathy with the idea that we may want to create a situation whereby we can revoke the license of a particular utility and then turn it over to somebody else; but how do we do that? And it seemed that the way we could really do that was to facilitate it by the state one way or the other, because there was a real sense that public utilities don't function very well and are not very responsive because they really don't have anything in mind who in fact could end up being the body which takes over the license which is in fact provoked by the facility, and that

might solve the situation.

MS. JONES: Delegate Maguire?

MS. MAGUIRE: Madame Chairman, would it be in order to move for an emergency situation and act without a quorum?

MS. JONES: No, because we have called, and the delegates have said that they will be here within the half-hour, and I think that we ought to give them the opportunity to do that. I know it is frustrating that people are not here, and we cannot have our quorum at the proper time, so I think we ought to give them that half-hour. One of the vice-presidents is supposed to be here by then, so we will wait another 15 minutes.

Are there any other questions that the delegates would like to pose to the Committee?

Delegate Graham?

MS. GRAHAM: I would like for somebody to discuss the people's council. That is under "c".

MR. CROFT: Yes. The people's council already exists in the District. The people's council at present has the responsibility of representing, protecting, defending, and advancing the interests of consumers. Our question deals with utility rights.

MS. NAHIKIAN: I would like to just briefly respond. It might help Delegate Graham to know that the people's counsel came into being when Congress passed legislation nationally saying that every local state had to have an office of a people's counsel to argue the consumers' interests before the rate commission, before the public service commission. About two years ago, I guess, the utility companies in Washington tried to get legislation passed that would do away with the power of the people's counsel, which had been very effective, obviously, in arguing over rate commission cases. Even though the rate of return for utilities is established by law, many times the utilities wanted rates higher than what was the rate of return established by law. So that I think it is a good idea to institutionalize the office of the people's counsel within the Constitution, because then we would never have to go through that argument again because it was a lengthy debate, the counsel.

MS. GRAHAM: Then we should include in this section, "A", "B", and "C", is that correct?

MR. CROFT: I would argue "A", "B", and "C", but I would also argue any creative amendments to this that might come off the floor.

MS. GRAHAM: Well, that's what I mean, but keep the

people's counsel.

MR. CROFT: Yes, we would argue keeping the people's counsel. We would argue that if it is not kept that people having a person represent them is always up for grabs.

MS. JONES: Is there another question for the Committee?

Delegate Schrag?

MR. SCHRAG: I would like to make a suggestion for how we might speed some of this along. I don't know whether this would be acceptable to the delegates or not. It is clear that the big issue that is going to take time today is the right to strike section, and people who want to make speeches about that, perhaps they might make some speeches now. Then, when we get to it, we can vote --

MS. GRAHAM: Where are the people who are going to vote? They are not here yet. What is the point of making a speech?

MR. SCHRAG: Well, I am saying if people feel like persuading those who are here, they might try to do that, and then we can get on and vote later.

MS. GRAHAM: Then we have to make second speeches.

MS. JONES: Since a debate and a speech are different things, people who would like to make speeches --

Delegate Barnes?

MR. BARNES: Because we don't have a quorum yet, I was informed by the press that persons who smoke, please stand further back from the door, because the smoke blows in on the members of the press.

MS. JONES: All right. Any delegate who wants to make a speech --

MS. NAHIKIAN: I'd like to make a speech about some other things.

MS. JONES: No, this is a speech on right to strike. Delegate Jackson?

MR. JACKSON: Yes, I will give a brief talk, but I call for a roll call vote on how we are going to speak.

MS. JONES: Delegate Graham?

MS. GRAHAM: I wanted to know, in Section 4, "Right of the Public to Own Utilities", you are talking about condemnation of all private property.

MR. CROFT: All private property owned by the utilities.

MS. GRAHAM: Owned by the utilities?

MR. CROFT: Yes, not your private property, but property owned by utilities. It says, "incidental to or necessary in the acquisition, control, and operation of

utilities."

MS. JONES: Delegate Schrag?

MR. B. MOORE: Delegate Croft, that reminds me of a question I have been meaning to ask you, and that is, what is the difference between appropriation and condemnation. The section that Delegate Graham has referred to uses both the words, "appropriation" and "condemnation", and I wondered if the Committee could tell us what the difference is between those two terms?

MR. CROFT: The Committee might recommend to strike one of them. Would you hold for a second, please? I could be clever and refer you to the Committee report. (Conferring.)

MS. JONES: There is a question on the floor, and the Chairman of the Committee is going to attempt to answer it. But the next person to speak is Delegate Lockridge, and then Delegate Brian Moore.

MS. GRAHAM: I am concerned about Section 3, page 12, "State Economic Development Bank".

MR. CROFT: Okay. I will refer you to Delegate Branes.

MS. GRAHAM: Delegate Barnes, if you could enlighten me, or am I misinterpreting it -- am I to understand that the legislature -- who ought to have the right to

establish this State Economic Development Bank -- will be the ones who will be concerned with structure and the process that will be followed in giving loans -- since I do not see anything that indicates the composition of the Development Bank, nor do I see anything in reference to the process that will be followed.

MR. BARNES: Yes, what we decided was to leave the legislature the flexibility to establish the detailed structure of the bank, because of the complexity involved. There may be several issues that need to be addressed and studied over a period of time, and these things may change over a period of time where we cannot now predict what will be the best structure. So what we wanted to do was establish the bank, but leave the legislature the responsibility of development.

MS. JONES: Delegate Croft, are you prepared to answer Delegate Schrag's question at this point?

MR. CROFT: What we have essentially agreed is that the words are pretty much synonymous, so the Committee will talk it over.

MS. JONES: Delegate Brian Moore?

MR. B. MOORE: I have a question on page 10, Section 2, regarding minimum wages, equal pay, health and

safety. Is this a standard statement made by most constitutions on the idea of equal pay for equal work and equal pay for comparable work?

MS. JONES: Delegate Croft?

MR. CROFT: I'm sorry, I didn't hear the delegate.

MR. B. MOORE: I was talking about page 10, on the minimum wages and equal pay. Is this standard language that most states have now?

MR. CROFT: Let me be honest. In the state constitutions, you talk about minimum wage, you talk about things like that. The language would be much more detailed than ours. There will be some perfecting language offered when we get to that section that would make it a bit more clear what we mean by that.

Essentially, we thought we would simplify it by essentially taking Federal language, which is simpler and it seems that we may have obscured the sort of thing we meant, so we have been offering to to talk about making some changes to make it clearer.

But states that talk about minimum wage and talk about work, hours, and things like that, go into much more detail. For example, there are sections on worker's compensation in some state constitutions that run for a page and a half, and

we haven't even talked about this in the constitution.

MR. B. MOORE: Are there constitutions that do not address it at all?

MR. CROFT: There are constitutions that don't address it at all, too.

MS. GRAHAM: May I ask you one quick question? I would like to ask you if you think that this should remain here on 12 and 13, as they have written here, lines 12 and 13.

MR. CROFT: Well, yes, I would think that -- do you mean the way that it is exactly worded now?

MS. GRAHAM: Yes, it says, "equal pay for equal work and equal pay for comparable work".

MR. CROFT: Those things, yes; those are not things we want to change. And again, it goes back to the majority of the Committee's basic philosophy, which is that we are talking about -- our position is that certain things are fundamental and that they are not transitory. If they are fundamental and they are not transitory, then they are things that ought to be put beyond a transitory majority. And we are saying essentially that if people do equal work, they ought to get equal pay, and that that shouldn't be left up to the transitory majority to say, as some people say, that people who do equal work should not get equal pay.

MS. GRAHAM: What about comparable work?

MR. CROFT: Again, what we are trying to do in this is to try and provide protection for minorities and for women. For example, one of the ways that you can legally prevent people from being paid equal pay for equal work is by simply how you classify the work, simply how you define the work.

MS. JONES: Delegate Brian Moore?

MR. B. MOORE: Chairman Croft, did you have any businessmen in your public hearings at all address this issue?

MR. CROFT: Yes, we had in our roundtable representatives of the D.C. Chamber of Commerce, and we had representatives from PEPCO appear at the roundtable.

MR. B. MOORE: And what was their feeling about minimum wage? How did they come down on this idea of minimum wage?

MR. CROFT: Oh, if you mean did they discuss these questions of minimum wage, no. However, it is my guess that the question of minimum wage is indeed a controversial one. In fact, in the U.S. Senate right now, there is a bill to get rid of the Wagner Act and get rid of minimum wages. One of the main efforts of the one conservative think tank in D.C. is to indeed generate all kinds of arguments

and all kinds of support groups to get rid of the minimum wage. It is assaulting the minimum wage right now; it is assaulting minimum wage and it is assaulting workmen's compensation.

The point I am trying to make is that, again, I don't see the constitution as an academic document, and I don't see our work as an academic exercise, and I think that although the goal is to write a living document, you can't support that living document from the (inaudible) at work right now. In other words, then you have a constitution that ignores the basic, fundamental conflicts going on -- who is protecting it, and who is writing it in advance?

And I guess I feel that we don't say very much about the rights of people in our constitutions, and those constitutions that do say something about the rights of people, those are the constitutions in which people have their rights stated in the constitution. But constitutions definitely talk about the right to property. They all talk about the right to property.

MS. JONES: Can I ask the Committee a question?

Did you, in any of your deliberations, talk about the eight-hour laws as they are implemented and so stated in the national health laws as to what happens to a person's safety,

what happens to him after eight hours, what becomes of over-time, compensatory time, and all of those kinds of things.

MR. CROFT: No, not in detail. Again, we are trying to be reasonable about this -- we have found that reasonable minds are very, very different -- but in the constitutional bargaining, if you say anything, you have begun to legislate. What we have done is say this. We have said that legislators shall provide for a safe and healthy workplace. And again, it is a question of whether you map that out in detail, or whether you leave it to the legislature. And we have tried to articulate the principles, try to have as much detail as possible as we thought would make it work, but have tried also to avoid giving evidenciary speeches and arguments.

MS. JONES: Delegate Talmadge Moore?

MR. T. MOORE: Mr. Chairman, on page 14, line 5, have you given any thought that this could be in a business pact or could be referred to the local government, transitional phase --

MR. CROFT: Yes, we will yield, and if that's the motion from the floor, I think that that is something that is perfectly acceptable to the Committee.

MS. JONES: Delegate Brian Moore?

MR. B. MOORE: I was just curious about whether there

was any discussion on addressing the problem of employment and unemployment under the economic development issue. With regard to a full week, job-sharing, or a smaller work week such as maybe a 45-hour work week, something like that. Was that discussed at all?

MR. CROFT: No, it was not. There were some schemes discussed, but I think that again, I guess the basic argument, it was generally testified the Chamber of Commerce put forth a fairly detailed set of ideas around that, and it looked like that argument that that was legislation won. And I guess the question that was made was that there are, again, many, many constitutions which have set the work hours in. They have set how many hours make up the work day. And I guess again, it comes back to the point of whether we want to get clobbered with the argument that you are legislating or whether you just want to assume that that is the apparent policy of the state.

I mean, in many ways, our Committee is on sort of a tightrope. In other words, people who I think are opposed to our principles, opposed to the concept that we are setting forth, can argue two different lines. They can say on the one hand, if we try to make things clear, that we have too much detail in the legislature. That is one way you can deal with

it. The second way you can deal with it is to say that we are vague.

MR. BARNES: Just to address the issue of detail and how far we can go, one thing I think the Committee generally agreed on -- and if someone on the Committee wants to disagree with me, they can -- is that state government, even though its intentions may be good, is limited in how much it can affect economic development issues.

There are many things that fall outside the realm of the state government, and as much as we would like the state government to do a lot of things, it has limits. It does not have the funding, it does not have the ability to draw on any other regional economic issues, and I think that is why people might say work week adjustments or whatever were overlooked, because we realize we can't effect that kind of thing in a practical way.

MR. B. MOORE: Thank you.

MS. JONES: We are still two people short of a quorum. There are 21 delegates here in Statehood Hall somewhere. Some of them are on the phone, trying to get other delegates.

Are there any other questions that you have for the Committee?

Delegate Rothschild?

MR. ROTHSCCHILD: In the energy section and utilities, the stuff to promote conservation of energy, did you ever think of putting in conservation and development, thinking of solar resources?

MR. CROFT: That was indeed one of the things that we had in mind.

MR. ROTHSCCHILD: The word "conservation" is in there, but not "development".

MR. CROFT: Unless you are thinking of an amendment, giving the opposition, the argument that now we have got too much detail.

However, there will be some section changes in that section. There will be a change offered by the Committee in the wording, because of the possible change of one of the words there.

MR. ROTHSCCHILD: Well, I do have a problem with the amount of detail,

MR. MARCUS: During the original Committee debate, some language was offered which specifically mentioned solar energy, wind power, and other alternative energy forms. It is similar to the language in subsection (a) of Section 1 of the environment article, and several of the delegates on the

Committee felt that that had created an untenable list of things that the Convention had to deal with. I myself would stand to vote in favor of mentioning those sorts of alternative sources.

MS. MAGUIRE: Madame Chairman, over a half-hour has passed. I believe it is now in order to make a motion that we are in an emergency situation and we do not have a quorum.

(Whereupon, the motion was duly seconded.)

MS. JONES: Is there discussion?

MR. COOPER: Ms. Maguire has set forth a motion that we declare this an emergency session.

MS. JONES: You may speak to the motion, Delegate Maguire.

MS. MAGUIRE: This is the same thing that happened yesterday, when we sat here for four hours waiting for a quorum.

If we could start right now without a quorum, and all we need to do is have the people here ratify the work that we have done -- I can't imagine that there are going to be that many more people here that could vote against the number that we have now.

MS. NAHIKIAN: Are you moving to suspend the rules?

MS. MAGUIRE: No. It is in the bylaws about an emergency situation.

MS. JONES: Delegate Talmadge Moore.

MR. T. MOORE: Madame Chairman, I want to speak against that motion, and the reason I want to speak against it is I think it is a dangerous precedent that we will be setting, and if we start that, then in the future, before the 29th, more delegates will stay out and say, "Well, they'll start anyway, so what's the use of me going in this early." I wouldn't like to see that, and I think it will be violating the democratic process.

I would rather wait about 30 more minutes, at least.

MS. JONES: The next hand I saw was Delegate Jackson's, and then Delegate Brian Moore, and then Delegate Rothschild.

MR. JACKSON: Madame Chairman, I would like to start, but we have one problem. If anything passes, anybody who disagrees with it has only to bring it up again, and we waste all this time. If anything passed that I disagreed with, I would do the same thing. So why not wait 15 minutes? It would save time if we do.

MS. JONES: Delegate Brian Moore.

MR. B. MOORE: We could be waiting 15 minutes, and we

could also be waiting another hour.

MS. NAHIKIAN: No. There are people on their way. I found three people on their way.

MR. B. MOORE: Anyway, that is still potential. And I would support the motion on the floor, because I think what may happen is the reverse of what Mr. Talmadge Moore is saying. If we continue to go along these lines of scheduling meetings at a certain hour, and we must wait two or three hours for other delegates to come, the delegates who are coming now are going to get discouraged, and I think it is going to be a vicious cycle, and it is going to get worse, not better. If we begin our meetings with a substantial number of delegates here, and then ask the delegates who do arrive to meet the quorum if they concur with this, it will make the people more accountable for their actions.

MS. JONES: Excuse me. Mr. Cooper has told me that he is still the presiding officer, and he wants to do some things.

MR. COOPER: We currently do not have a quorum, and we are not able to elect a pro temp Chair until we have one. Therefore, as Secretary, I am still the presiding officer, and I would be hesitant to act upon this until we have someone in the Chair, and we can't get a Chair until we get a quorum.

That would probably be the better way to proceed, so that we don't get ourselves into a quandary with the majority of the delegates, who are not here.

MS. MAGUIRE: The majority of the delegates are here, though.

MR. JACKSON: Mr. Chairman, why don't we at 4:30 entertain a motion to reduce the quorum, if necessary?

MS. NAHIKIAN: I think that is a good idea.

MS. JONES: And "Robert's Rules" says that you can elect a pro temp Chairman with one more than one-half of your numbers present.

MR. KAMENY: You are the two top ranking officers. Nobody above you is here. You can be Chair with no problem.

MS. JONES: Mr. Cooper does not want to Chair, and he stated to the number sitting that he could not Chair because the Secretary cannot Chair.

MR. KAMENY: Why not?

MS. JONES: He says it is not his duty. It is not in my duties either, but I was under the opinion, since we went by succession, that if people weren't here, that we would just continue to go about the session, but Mr. Cooper does not want to do that.

MR. KAMENY: Theresa, you Chair. I think you

would make a delightful Chair.

MR. COOPER: The problem we are having is this, and as Brian Moore pointed out in "Robert's Rules" earlier, when the President and all three Vice Presidents are not here, the Secretary must serve as presiding officer, and the only business he can immediately enter into is the election of a pro temp Chair until such time as the Chair arrives. And they point out that that can be done with one more than a minimum of your total number of delegates. It would take a quorum, 23 delegates, to be here to elect a Chair. So until 23 delegates are here, we can't even elect a Chair pro temp.

MR. B. MOORE: Mr. Secretary, I don't recall in "Robert's Rules of Order" where it requires a quorum to conduct those elections.

MR. COOPER: Yes, but you see, in order to conduct the election, there would have to be a motion placed on the floor to order nomination, and that takes a quorum. The only motions that can be introduced without a quorum are privileged motions such as motion to adjourn, motion to recess, and so on.

Until we do get a quorum, the only thing you can do is continue with questions and answers, and at the time that a quorum arrives, we can elect a pro temp Chair and proceed to take care of business.

Delegate Schrag?

MR. SCHRAG: Since this is informal, and I think people have more or less run out of questions for the Committee, and since this has no status at all, I wonder if I might just ask the body a question about a different article of the constitution. I'd just like to get a sense of the body on it. It might save us some time.

MS. JONES: Delegate Schrag, is this an article that has already been debated?

MR. SCHRAG: Yes, it is.

MS. JONES: So the article is not to be spoken to again until second reading.

MR. SCHRAG: That's right, and I want to know --

MS. JONES: Delegate Schrag, I think that before making a decision as to whether or not we put it on the floor, formally or informally, it ought to have some standing, whether formal or informal, as to whether or not it ought to be done.

And my third question is this. Is this something that you intend to amend at the second reading?

MR. SCHRAG: Only if there seems to be support -- a lot of support -- for it. That's the question I wanted to ask.

MS. JONES: Okay, but I do think that your lobby in support for that ought to be done not on the Convention floor. Argument to persuade the attention and the votes of the delegates can be done in a formal argument on the Convention floor. If you want to be lobbying to vote that ought to be done not formally or informally on the floor, but in other parts of the Convention Hall. Now, if that is the purpose of why you want to ask for opinions, I think that you should do that at the proper time only.

MR. SCHRAG: I only ask because we don't have a quorum, and therefore, it is not taking up any of the Committee's --

MS. JONES: Well, you can do your lobbying at recess time. I don't think it ought to be done at this point. I think that is improper.

Delegate Graham?

MS. GRAHAM: I would like to ask a question about state banking and cooperation, if we have time.

MS. JONES: Yes, you may ask that of the Committee.

MS. GRAHAM: That's page 12 of 15. I would like for somebody to discuss the State Economic Development Bank. That is at lines 8 and 9 of Section 3.

MR. CROFT: That question was asked earlier, and I don't think you were here then. What we tried to do, we felt that we needed a forum, an institution to be established, to be more or less a bank of last resort, in order to fill in the gaps left by financial institutions who could turn down applicants for loans who wouldn't qualify. What we decided to do at lines 9 and 14 is define the general direction and purpose of the bank in the constitution to give the legislature guidelines on which to formally establish the bank. But we left it up to the legislature -- we felt that the detailed issues much be developed over a long period of time, required much study, et cetera, and so that is why we gave the legislature that power.

MS. GRAHAM: So the idea was to help people who did not have much money and whatnot, low-income people?

MR. CROFT: Right. The idea is to give the state some flexibility in effecting economic development if it chose to do so.

MS. JONES: Delegate Bruning, would you go into the hall and other places and ask all the delegates to come in onto the floor?

MR. JACKSON: We need one more delegate coming to the Convention. We have 22 people in the building.

MS. JONES: Yes, but we want them all to come in so that they can answer a roll call.

Delegate Brian Moore?

MR. B. MOORE: I was wondering if the body would be curious as to speculate on the reasons why we are having difficulty with attendance.

MS. GRAHAM: I think we do need to discuss that.

MR. B. MOORE: Is this something that we might remedy in the next two weeks?

MS. NAHIKIAN: Do you know what I think the problem is? The problem is that we changed the times, and a lot of people, I think, who were not here were not aware that we changed the time from 10 to 12.

MR. JORDAN: No, no.

MS. JONES: No, I don't think that's the case at all. Does somebody else have something to add?

Delegate Rothschild?

MR. ROTHSCHILD: I don't know. I just think it is a strange attitude of the delegates towards the Convention. I mean, it has been clear from the beginning that we haven't had enough time to do the job, and then people during debate would jump on people for talking too much. Then, when we put a vote before the body to extend the time, there was not a willingness

to extend the time, and now there is not a willingness to make the best use of the time we have. So quite frankly, it indicates to me that there is something wrong with the attitude of the overall body towards the Convention. That's all.

MS. JONES: Delegate Moore?

MR. B. MOORE: Well, I just have to wonder out loud that maybe all the delegates don't feel a sense of participation.

MS. JONES: We have 22 delegates in the house. We need one more.

MS. NAHIKIAN: Why don't we make Mr. Valentine a delegate?

(Laughter.)

MS. JONES: Are there any other more practical alternatives?

Delegate Long?

MR. LONG: I think it is clear that we have bitten off more than we can chew. The physical limits of the body are catching up with us, and I think it is time we voted for an extension and stop fooling around.

MS. JONES: Delegate Graham?

MS. GRAHAM: Madame Chair, I think what we need to do is in our wards, try to get at least three people to be

here on time. If we could do that with ward delegates, then maybe that might help. I don't know. I think we have three here this morning from Ward 6, and two are not here. But if all of us could try to get three delegates from each ward, that would be a quorum, and we could do that.

MS. JONES: Delegate Barnes?

MR. BARNES: I have no problems about attempting to get an extension. The question is, will we be granted an extension. I don't think we can work on that basis. I think one of the solutions is if we have an early meeting that the delegates sign a sheet saying yes, I will be here at a certain time, and I think what happened yesterday was a result of that. I know I would have signed a sheet, and many people would have signed a sheet. We didn't get a meeting.

MS. JONES: Delegate Jordan?

MR. JORDAN: Madame Chair, I would oppose the extension of time for several reasons, but I think that something is even more in need of attention this evening than talking about extension of time -- this is not a personal criticism, but we have elected individuals to serve as officers --

MS. GRAHAM: Thank you. I want to thank you.

(Applause.)

MR. JORDAN: It is not personal, but I am saying I

think the criticism is just. That is to say that not only do we have a President, but we have a First, Second, and Third Vice President.

MS. GRAHAM: That's right, and none of them are here.

MR. JORDAN: Now, I don't think you should expect delegates to come -- I should make some distinction between us and the officers -- I think it is very difficult when you see the leadership of this Convention take a laissez-faire attitude about coming to these plenary sessions. I think you will see the general membership take the same type of attitude. I think it is infectious.

So I would hope that sometime today, we impress upon our officers -- even though we have several here -- but those who are in the key leadership positions, and I hope that sometime today, we will make it very clear to them that we expect them to be here, at all the plenary sessions, at the time set.

You know, leadership has with it certain responsibilities, and people were elected to those positions, and none of them declined. They had an option at one point to say, "No, I don't think I can serve the time limits, or time constraints, and I won't be able to service," and we would have respected their wishes. But no one chose to stand up and say that. So

I think that in light of that, they have indicated to us that they do want to serve, and we are in need of their services. And I just think that rather than discussing extending it -- because I think that whenever we have had a quorum in the last two days, we have been able to move expeditiously without any delays, and I just think that the question now arises about getting a quorum. I think the way to do that is to impress upon the leadership that they have a responsibility to be here, and I think if they are here, they will be able to encourage, coerce, cajole, whatever method would have to be used to get other delegates here.

Thank you.

MS. JONES: Delegate Kameny?

MR. KAMENY: I just want to say very briefly, while I concur with what Delegate Jordan has said, I think it should be pointed out in fairness that our First Vice President told me last night that he is on doctor's orders to attend only a certain number of meetings, and he could not be at this one because he had met his quota for the week already; and that our Third Vice President, I am under the impression, has law school exams today and will be here when those are over.

I think in fairness, that should be pointed out.

MS. NAHIKIAN: But the President and the First Vice

President are not here --

MS. JONES: Delegate Nahikian, Delegate Graham had the floor next.

MS. GRAHAM: Madame Chair, one of the things early in this convention, before we set out in the convention, I was concerned because I thought that there might be times when the President, First Vice President and Second Vice President would not be here. So we established a Third Vice President. Now, I am beginning to think we should have had a Fourth and a Fifth.

But I do think anybody who is a President, regardless of what level, one of them should be present for a meeting. I don't think we should have to go through this. This is ridiculous. When a person took this on, that person knew he or she would have a commitment through May, and they know that because that is a continuous thing. I knew certain things would happen when I was elected, and I said I could go along until -- when they said, "You have to have it May 29th", I knew I could function in that time line. Now, from the 1st of June to about the 22nd of June, I know some things I have to do, and I may not be present for this. I hope we will finish it.

Another thing I think we had listed by Mr. Jordan about the leadership, that is one thing we can work on. Another

thing we can work on is to have representation, at least three delegates, from a Ward, and we will have a quorum at all times; if we could keep it that way. By using these two techniques, I think we should be able to start on time, and I don't think we need to change the time anymore, because if we couldn't meet at 6:00, why would we say 4:00? It's not good thinking, I don't think.

The first thing we need to do is to be sure we meet at 6:00, and then we could raise the time limit, if we choose. But we did not meet at 6:00 when we said 6:00. Then we said we were going to meet yesterday, and I took a day off -- and may I say to the Convention, I will not make that mistake again, but I promise you I will get here as early after I leave my job as I possibly can. But we need to do something about seeing that at least one President is here at every meeting and on time, because we have four of them. Maybe they need to work out some time they are going to be here among themselves, so that we will not be deprived of proper leadership, where we will have somebody discussing what "Robert's Rules of Order" says about somebody else.

I am appalled, too, Mr. Jordan, and I go along with you. Maybe we need to write them a note or a combined note saying, "Could you set up a schedule, could you talk with

—
this person if you are not going to be here, and get one of the Presidents here?"

MS. JONES: Delegate Talmadge Moore.

MR. T. MOORE: It has already been spoken to very eloquently by the other people on the floor, but I think it is time to stop debating this, and I think we should call the Executive Committee in and let them confront this body, and if they don't want to come in and assume that responsibility, there is such a thing as recall. We can recall some of these people, and put somebody else up there.

(Applause.)

MR. T. MOORE: So I support Mr. Jordan's statement, and I think when they come in here, we need to have an audience with them. This calls for a meeting. We need to lay down rules and regulations with them.

MS. JONES: We have a problem hearing because the other delegates who do not have the floor are speaking louder than the person who has the floor, and I am asking you to stop -- Delegate Love, I am asking you to stop; Delegate Maguire, I am asking you to stop, and Delegate Jackson, I am asking you to stop; Delegate Holmes and Delegate Jordan, I am asking you to stop.

—
The next speaker is Delegate Nahikian.

MS. NAHIKIAN: I would just like to point out to the body that when we were debating the rules, I introduced a motion that we would have some ability in our rules to do recall if necessary, and it was soundly voted down by the delegates. I hate to say "I told you so".

MS. JONES: Delegate Rothschild?

MR. ROTHSCCHILD: A minute ago, I spoke to the attitude of the delegates. The whole Convention, really, has been a confusion to me. It seems that we started out with constraints on us of time and money that clearly made the task undoable in the time limit and with the resources we had. Now, that was not our problem. We did not create that problem. But nevertheless, as a supposedly rational group of people, elected to do a rational process, it is hard for me to understand how a rational process has not dealt with our problems better. I mean, I can see the same irrational thinking reflected in the document we are creating, and now we are caught by our own process. So what I am saying is, it is not all our fault, but it doesn't seem to me that we have done the best we could do with the circumstances to try and manage them.

Quite frankly, I'm baffled. I mean, in terms of human behavior, we are a group of people who are supposed to be thinking clearly, and I don't see it evident. I don't see

anything.

Now, I am also concerned not just for this Convention. I think the social order is a problem. I think that the process we are going through here in terms of thinking out government policy --

MS. JONES: Delegate Rothschild, I apologize for interrupting you, but the subject on the floor is the quorum, and delegates are talking about the alternatives that we can take to --

(Applause.)

MS. JONES: Our 23rd delegate has just arrived.

MR. SCHRAG: Lock the doors.

(Laughter.)

MR. ROTHSCHILD: Madame Chairman, may I just finish?

MS. JONES: I think that the second subject that you introduced to the floor should come to the floor at another time.

MR. ROTHSCHILD: But at this time I would like to --

MS. JONES: At this time, Delegate Cooper will entertain --

MR. ROTHSCHILD: Madame Chairman, I would not like to be interrupted. I will stop, but I would like to stop in a rightful way. All I am saying is that I will stop, but I don't

like to be interrupted.

All I am saying is that our working together to create a process that is viable is just as important as a good constitution.

Thank you.

MR. COOPER: Fellow delegates, a quorum has been established. Inasmuch as no Chair is present, the only motion that would be in order at this time is the motion to elect a Chair pro tem..

The floor is now open for a nomination.

Delegate Graham?

MS. GRAHAM: Mr. Secretary, I nominate Theresa Jones.

(Whereupon, the motion was duly seconded.)

MR. COOPER: The name of Theresa Jones has been placed in nomination and duly seconded.

Is there any opposition?

(No response.)

MR. COOPER: Delegate Long?

MR. LONG: I move the nomination be closed.

(Whereupon, the motion was duly seconded.)

MR. COOPER: Can we get unanimous consent?

(A chorus of ayes.)

MR. COOPER: There being no opposition, Theresa Jones is the Chair pro tem at this time.

MS. JONES: We will call the Convention to order. The Secretary reminds me that the roll has been called. We now have a quorum of 23.

We will have a moment of silence.

(Pause.)

MS. JONES: Thank you.

We will start where we left off yesterday with Delegate Croft's Committee Report.

MR. CROFT: Madame Chair, we are still on Section 2, Utilities.

MS. JONES: Delegate Bruning will be at the amendment table, and we will follow the same procedure on amendments as we have been following for the last three working days.

MR. CROFT: Madame Chair, the Committee has perfecting language to offer for "(c)". After the word, "agency", change "agency or agencies" to "one or more commissions". We are doing that because so that we don't use up one of the 20 departments that we have established, with the top level, the Executive Department.

MS. LOCKRIDGE: May I ask what page we are on,

please?

MR. CROFT: We are on page 7, line 3. The Committee is changing the language from "agency or agencies" to "one or more commissions", to regulate public utilities, and so on.

MS. JONES: Are you moving the section?

MR. CROFT: Okay, as I understand it, that is our own language, and we don't have to make any amendment to that, but yes, I will move for the adoption of Section 2 as amended.

(Whereupon, the motion was duly seconded.)

MS. JONES: It has been properly moved and seconded that Section 2 as amended be adopted -- that is, the entire section is being moved.

MR. CROFT: And I could be corrected by the Chair, but I understand that we have exhausted the amendments which we had before us; I don't know that anymore are being offered.

MR. COOPER: When we adjourned, that motion to adopt the whole section was on the floor.

MR. CROFT: Okay. I am making the motion to adopt Section 2 as amended.

(Whereupon, the motion was duly seconded.)

MS. JONES: Delegate Barnes?

MR. BARNES: I move the previous question.

(Whereupon, the motion was duly seconded.)

MS. JONES: Delegate Rothschild?

MR. ROTHCHILD: Yes, just briefly, although I think the ideas within the section are quite good, and I think all these things should be in our system of government, I think there is actually too much detail in the constitution with regard to this. So therefore, although I think it is good, I don't think we should have this amount of detail in the constitution.

Thank you.

MS. JONES: Are there any other questions?

(No response.)

MS. JONES: Are we ready to vote on the motion to cut off debate?

MR. BARNES: Call the question.

MS. JONES: All those in favor will signify by raising their hands. This is on the question to cut off debate.

(A show of hands.)

MR. COOPER: Eighteen.

MS. JONES: Those opposed?

(No response.)

MS. JONES: Those abstaining?

(A show of hands.)

MR. COOPER: One.

MS. JONES: We are back to the motion on the floor to adopt Section 2, the entire section. All of those in favor will signify by raising their hands.

(A show of hands.)

MR. COOPER: Fifteen.

MS. JONES: Those opposed?

(A show of hands.)

MR. COOPER: Four.

MS. JONES: Those abstaining?

MR. COOPER: Two.

MS. JONES: The motion passes.

Delegate Croft?

MR. CROFT: Madame Chair, I move the adoption of Section 3, Energy, following perfecting language agreed upon by the Committee. On line 15, strike "all types"; that is line 15, page 7. And going over to page 8, on line 2, insert after "agency", "within one of the principal executive departments".

MS. LOCKRIDGE: And how would that read, sir?

MR. CROFT: It will now read, "to attain these goals, there is established a state agency within one of the

principal executive departments which shall", and as it is.

(Whereupon, the motion was duly seconded.)

MS. JONES: It has been moved and seconded. Are there any questions? Is there a minority report, Delegate Croft?

MR. CROFT: Yes, there is a minority report by Delegate Korn, and the minority report says, "On page 8, delete everything on line 1 after the period". The new language will read, "General public requires the availability at reasonable prices of energy of all types in the encouragement of energy conservation". That is the minority report.

MS. JONES: Is there a second for the Korn amendment?

MR. COOPER: The Chairman simply read the minority report. No one moved it. No one has moved the minority amendment. It has to be moved.

MR. BARNES: Point of order.

MS. JONES: Delegate Barnes?

MR. BARNES: I confirm what Delegate Cooper is saying. The minority report as written is read to the body, but if no one moves the minority report, it dies right there.

MS. JONES: On the past evening, the minority reports were read and a second was asked for. If no one seconds the minority reports, then they were not entertained,

and I think I'll follow that same procedure this morning, because we have set a precedent for doing that, and in order to have some consistency, I would follow the same procedure as Mr. Baldwin followed last night.

Is there a second for the Corn amendment?

(no response.)

MS. JONES: Hearing no second, it dies for lack of a second.

There are several amendments, and these are not minority reports, but these are amendments.

Is Delegate Oulahan here?

MR. T. MOORE: I had a question, Madame Chairman.

MS. JONES: Yes, Delegate Moore?

MR. T. MOORE: I had a question on the make-up of that last one, and Mr. Croft, I wanted to know what is the definition of a "principal executive department"?

MS. JONES: Delegate Moore, can you hold that question until we find out if the people who gave the amendments are here.

Delegate Oulahan? Is Delegate Oulahan here?

MR. SCHRAG: Delegate Oulahan noted last night, Madame President, that he will be here before 1:00, so perhaps if that amendment is passed over for now, he may arrive

before we finish this section.

MS. JONES: Delegate Cooper?

MR. COOPER: I will move the Oulahan amendment.

MS. LOCKRIDGE: Could you read the amendment?

MS. JONES: Yes, he could do that.

MR. COOPER: Fellow delegates, I so move that
Section 3 be stricken in its entirety.

MS. JONES: Is there a second for the Oulahan
amendment?

(No response.)

MS. JONES: Hearing no second, it dies for the lack
of a second.

MS. EICHORN: I second the motion, Madame President.

MS. JONES: Delegate Eichorn, would you like to
speak to the Oulahan -- oh, Mr. Cooper would like to speak to
the Oulahan amendment first and then Delegate Eichorn.

MR. COOPER: The reason I am against this section is
not really on principle, but I think this section points out all
that was wrong in our Committee. If you take Section (a) of
3 which reads, "regulate the sale, distribution and consumption
of energy types not regulated by the public utilities,
regulatory agency or agencies", this was a section that was

discussed at length in the Committee. It was soundly defeated by the Committee when it came up before Committee. I am against this section because of that procedure.

On April the 20th, 1982, this section was introduced in a policy that was given to us in a draft, and I have it in my hand, and I do have the minutes, and I know the proceedings. That is why I am against this section. It was introduced as a public policy on energy, and it says, "The legislature is empowered to regulate the sale, distribution and consumption of energy types not regulated by the public utility agency or agencies." We had much discussion on this in Committee, and it came to a vote, and it was defeated in Committee.

MS. LOCKRIDGE: Point of information.

MS. JONES: Delegate Lockridge?

MS. LOCKRIDGE: If, in fact, what Delegate Cooper says is true that it was soundly defeated in Committee, why is it incorporated --

MR. COOPER: That's what I'm speaking to.

MS. JONES: Delegate Cooper, Delegate Croft, as Chairman of the Committee, will answer that.

MR. COOPER: Point of order. I had the floor and was interrupted on the point of information. I still have the floor.

MS. JONES: Delegate Cooper, you still have the floor after Delegate Croft, who is the Chairman of the Committee, will satisfy the point of information.

MR. COOPER: Point of order. I was doing that satisfaction in my explanation, and I was interrupted on a point of information, and still have the floor.

MS. JONES: Delegate Cooper --

MR. COOPER: You can't relinquish the floor.

MS. JONES: Delegate Cooper --

MR. COOPER: But Madame Chair --

MS. JONES: Delegate Cooper, I allow the point of information, and I will allow the Chairman of the Committee to satisfy the point of information, and you may have the floor after that happens.

MR. COOPER: Madame Chairman, may I inquire as to how much time I have left on the floor?

MS. JONES: You will have the same amount of time --

MR. ROTHSCHILD: Point of order. I think that is very bad procedure to interrupt the speaker.

MS. JONES: You will have the same amount of time as you would ordinarily have.

Delegate Croft, would you satisfy the point of information, but before you do that, Delegate Rothschild, you

are out of order.

MR. ROTHSCCHILD: I think it is out of order to interrupt the speaker.

MS. JONES: Delegate Rothschild, you are out of order. Delegate Croft, will you please satisfy the point of information?

Mr. CROFT: Yes. A proposal has been submitted for a public policy on energy. It is Section (d), "regulate sale, distribution and consumption of energy types not regulated by the public utility agency or agencies". Now, what happened was that most of this section was not accepted by the Committee, and what happened was that Delegate Cooper, Delegate Barnes and Delegate Marcus worked out new language, resubmitted it to the Committee, and that is what I was referring to.

MS. JONES: Okay. Delegate Cooper, you now have the floor.

MR. CROFT: I think it would be obvious to the Delegate that I surely didn't read the minutes, because I am speaking against it. And now --

MR. JACKSON: Point of order, Madame Chairman. He is arguing the minority report. That is out of order. That is to be addressed at the end of the section.

MR. COOPER: I am not arguing the minority report.

I am arguing the amendment --

MR. JACKSON: No, you are not --

MS. JONES: Delegate Jackson, I did give him the floor. He said he was going to speak to the amendment, and hopefully, that's what he is going to speak to.

MR. JACKSON: He has not spoken to the amendment.

MR. COOPER: I will continue to say why I am against the amendment.

As I stated earlier, I am against the amendment because of the way it came into this article. As I said, on April 20th, this amendment came up, and it was soundly defeated. It was then reintroduced immediately. Now, I raised the point of order in the Committee, and here is what the Committee told me. They said when it was initially considered, it was considered as a duty of the legislature. Now we are going to consider it as a duty of an agency; therefore, it is different. When in fact, the issue was not who would regulate, but the issue was whether or not there would, in fact, be regulation. That was defeated and reintroduced by a number of members of the Committee who incidentally did all of this action in lockstep voting. It was introduced in substance after it had been defeated in substance, under the hidden guise of the moot question of

whether or not it was really a duty of the legislature or an independent agency or the executive or a court, or whomever, which was not the question. The question was whether in fact there would be regulation. This is how it was defeated and reintroduced. That is why I speak against this section.

MR. CROFT: Point of personal privilege.

MS. JONES: Yes, Delegate Croft.

MR. CROFT: I feel that my own integrity and that of the members of the Committee has been attacked, and I would like to respond to that, very briefly.

MS. JONES: Delegate Croft, the Committee will have ample response time to --

MR. CROFT: This is an attack on my integrity --

MS. JONES: Delegate Croft, I will give you ample time to respond.

The next person is Delegate Marcus -- are you responding for the Committee?

MR. MARCUS: No. I am responding for myself.

MS. JONES: Okay, Delegate Marcus.

MR. MARCUS: Briefly, what essentially took place here was that in the Committee debate, it was agreed that in fact, it was a good idea to pursue this line of thought. As Delegate Croft explained, there were some problems with the

Committee in regard to the rest of the proposed article. Therefore, Delegate Barnes and I worked together to propose language which appears here which included that particular concept. If we follow Delegate Cooper's line of reasoning, then, that means that every Committee, once they have voted down some article in its entirety simply because portions of that particular article did meet their needs and other portions did not, and wanted to have certain portions included in their particular article, what Delegate Cooper's logic would lead up, then, to say is that we could never pick and choose in our Committee work those concepts that we want to present to the Convention.

What he is saying is that entire articles would have to go down without any other consideration. What he is saying in his "lockstep" comment is that delegates can't vote on the safe side. What he is saying is that delegates can't write language --

MS. JONES: Delegate Marcus, speak to the amendment, please.

The next person to speak is Delegate Paramore..

MS. PARAMORE: Point of information.

MS. JONES: Delegate Love?

MR. LOVE: Madame Chairman, this is a point of

personal privilege. We have a new Chair today, and I would appreciate it if all delegates would try and work with Delegate Jones. She is trying her very best.

(Applause.)

MR. LOVE: I would appreciate it if all delegates would keep their voices down when they talk. And I would appreciate it if the Committee would not replay for all the delegates whatever internal bickering they previously have had, and let us discuss these civilized, quietly and efficiently, and move on.

Thank you.

MS. JONES: Delegate Jordan?

MR. JORDAN: Yes, I have just a couple questions Madame Chairperson.

The questions I have are essentially this. The objections that have been raised to this being included in the constitution, I guess, are that either the state should not have the authority to do this, or that the state already has the authority to do this, and therefore, it would not be necessary in the constitution. So my question is, is that an appropriate, or is that a correct analysis -- that is to say, are the opponents to the section saying that the state already has authority to do this, and that it is unnecessary in the

constitution, or are they saying that the states should not have the right to do this. That is number one.

The second question is, I don't see any statement in here that talks about or speaks to the regulation of prices of energy. Was it the intent of the Committee to leave the establishment of pricing for the sale of energy to those who would provide those sources and to allow the state to do basically what the District of Columbia does today -- do its licensing, processing and taxing and what-have-you to only regulate the sale, distribution and consumption of energy and also to promote energy conservation?

MS. JONES: Delegate Croft?

MR. COOPER: Point of order.

MS. JONES: You may make your point of order.

MR. COOPER: The amendment on the floor is to strike. That question has nothing to do with the amendment to strike.

MS. JONES: But I do believe the delegates have the right to rise and try and persuade, one way or the other, the delegates to vote for or against the strike.

Delegate Croft, you may answer Delegate Jordan's point that he brought to the floor.

MR. CROFT: I may have misunderstood Delegate

Jordan's point. If I did, correct me.

MR. JORDAN: What I'm saying is there is a motion to strike, and I want to make sure that if I vote one way or the other -- it hasn't got anything to do with a soliloquy or a speech or anything else, but it has got to do with a point of information. And I am trying to find out if the proponents of this amendment to strike are saying that it should be struck because it is unnecessary because the state already has the authority to do this, or are they saying that they don't want the state to have the authority to do this. And the second point is I am saying do they understand this provision that they are asking to strike to prohibit regulation of prices. I don't think that is an incorrect inquiry.

MS. JONES: Since the proponents of the strike are Mr. Oulahan and Mr. Cooper, would one of them like to answer this?

MR. COOPER: I have had an opportunity to speak.

MS. JONES: Then, Delegate Oulahan?

MR. OULAHAN: Thank you, Madame Chairman.

I move to delete this section for several reasons. Number one, we are creating another agency of the government, a proliferation of agencies. I have not counted how many have been created, but here is another one, which is unnecessary.